

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BILLY RAY O'NEAL,

No. C 12-4236 SBA (PR)

Plaintiff,

**ORDER DENYING RECONSIDERATION
OF ORDER IN CASE NUMBER C 08-4669
SBA; RENEWED NOTICE OF NEED TO
FILE IN FORMA PAUPERIS
APPLICATION**

v.

J. REYMONDO, et al.,

Defendants.

Docket No. 2

On August 10, 2012, Plaintiff, a former state prisoner, filed the present pro se prisoner complaint under 42 U.S.C. § 1983.¹ In this complaint, Plaintiff asserts an Eighth Amendment claim, alleging that, in 2007, after he was arrested and placed in the San Francisco County Jail, he was beaten by Deputy J. Reymondo. He also alleges a conspiracy to falsify evidence of his beating between Deputies Reymondo and Camarra, Lieutenant Gorwood and Sheriff Michael Hennessy.

Also, on August 10, 2012, Plaintiff filed the instant motion for reconsideration of the dismissal of his previous case, C 08-4669 SBA. In the 2008 case, Plaintiff brought the same claims against the same Defendants that he sues here. The 2008 case was dismissed because Plaintiff had failed to exhaust administrative remedies. See C 08-4669 SBA, Dkt. 41. Dismissal was without prejudice to refile another complaint after Plaintiff exhausted administrative remedies. Plaintiff appealed this Order to the Ninth Circuit Court of Appeals and, on October 1, 2012, the Ninth Circuit granted to Plaintiff IFP status on appeal. Therefore, Plaintiff's appeal of the 2008 case is pending before the Ninth Circuit, which divests this Court of jurisdiction over it. Because this Court lacks jurisdiction over the 2008 case, it cannot consider Plaintiff's motion for reconsideration of its previous order dismissing the case. Therefore, the motion for reconsideration is denied.

The Court also notes a serious problem in Plaintiff's 2012 case. On August 10, 2012, the Court sent Plaintiff a notice that he had to pay the \$350.00 filing fee or sign and complete this Court's In Forma Pauperis application. See Dkt. 3. The notice contained the following warning:

¹In his motion for reconsideration, Plaintiff indicates that he was released from custody on May 10, 2012. However, Plaintiff's complaint indicates that his address is the San Francisco County Jail and he has not submitted a change of address to the Court. Plaintiff is required to inform the Court of his current address. See L.R. 3-11(a).

Warning: YOU MUST RESPOND TO THIS NOTICE. If you do not respond within THIRTY DAYS from the filing date stamped above, your action will be DISMISSED, the file closed and the entire filing fee will become due immediately. Filing a Prisoner's In Forma Pauperis application will allow the court to determine whether installment payment of the filing fee should be allowed.

To this date, Plaintiff has not filed an In Forma Pauperis application or paid the \$350.00 filing fee. Because Plaintiff has ignored the Court's warning, his case should be dismissed. However, in the interests of justice, the Court will allow Plaintiff another thirty days from the date of this Order in which to file his In Forma Pauperis application. If Plaintiff does not file his application in this time period, his case will be dismissed without prejudice for failure to prosecute.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's motion for reconsideration is DENIED.

2. Plaintiff has thirty days from the date of this Order to file his In Forma Pauperis application in this case.

3. The Clerk of the Court shall send Plaintiff the Court's blank In Forma Pauperis application, which includes a Certificate of Funds in Prisoner's Account form, and a return envelope.²

4. This terminates Docket No. 2.

IT IS SO ORDERED.

DATED: 11/20/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

²If Plaintiff has been released from custody, he does not have to complete the Prisoner Trust Account form.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BILLY RAY O'NEAL,
5 Plaintiff,

Case Number: CV12-04236 SBA

CERTIFICATE OF SERVICE

6 v.

7 J. REYMUNDO et al,
8 Defendant.

9
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on November 21, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Billy Ray O'Neal #12672920
17 San Francisco County Jail
18 SF#288973
19 850 Bryant Street
20 San Francisco, CA 94103

21 Dated: November 21, 2012

Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk

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